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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-439

BRIDGEPORT HYDRAULIC COMPANY, et al.,
Appellants,

v.

THE COUNCIL ON WATER COMPANY LANDS
OF THE STATE OF CONNECTICUT, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

MOTION TO AFFIRM AND REPLY TO JURISDICTIONAL STATEMENT

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Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the final judgment of the District Court be affirmed on the ground that the question is so unsubstantial as not to warrant further argument.

OPINION BELOW

The opinion of the three-judge court for the District Court for the District of Connecticut is reported at 11 E.R.C. 1545. The appellants have attached to their jurisdictional statement copies of the Opinion, the Judgment and the Notice of Appeal as their Appendix B. All citations to that

Opinion in this Motion to Affirm and Reply to Jurisdictional Statement will refer to the appropriate pages of Appendix B of the jurisdictional statement.

JURISDICTION

The jurisdictional requisites are adequately set forth in the jurisdictional statement.

QUESTIONS PRESENTED

This Motion to Affirm and Reply to Jurisdictional Statement will respond to the questions presented as stated in the jurisdictional statement.

STATUTES INVOLVED

The statutes involved are adequately set forth in the jurisdictional statement. All citations to the respective statutes involved will refer to the pages of Appendix C where those statutes have been printed in the jurisdictional statement.

STATEMENT

This is a direct appeal from the final judgment and decree entered on June 19, 1978, by a District Court of three judges specially constituted pursuant to 28 U.S.C. 2281 and 2284, dismissing all causes of action alleged in the plaintiffs' and intervenor's complaints.

The appellants have appealed from that part of the judgment which dismissed Counts I and II of their five-count complaint, in which they sought declaratory and injunctive relief pursuant to 42 U.S.C. 1983 by way of an injunction restraining enforcement of state statutes on grounds of unconstitutionality. As more fully appears in the Memorandum of Decision reprinted in Appendix B of the appellants' jurisdictional statement, several other statutes and regulations comprising parts of the state's regulatory scheme for privately owned water utilities were also attacked in the complaint.

The complaint was filed on July 2, 1975. Thereafter a three-judge District Court was convened under 28 U.S.C. 2281 and 2284. Following completion of the testimony and the assembling of a large number of exhibits, briefs and reply briefs were filed on October 1, 1976, and the case was argued on October 19, 1976.[1] The Memorandum of Decision was dated December 29, 1977. Subsequently, the parties having complied with the order of the Court, a final judgment was entered on June 19, 1978. Public Act 77-606, amending Sec. 25-32, was adopted by the state legislature after the date of argument and before the date of the Memorandum of Decision. The statute was brought to the attention of the District Court without added briefing or argument by the parties. The reservations expressed by the District Court in part II of its Memorandum of Decision were met by the adoption of other statutes in the 1978 session of the state legislature and are not germane to this appeal.

In the jurisdictional statement the appellants have reasserted part of their original claims that the state's regulatory scheme for water utilities is unconstitutional as to them. The scope of the questions presented has been limited to the statutes involved, Sec. 16-22 and Sec. 25-32, as amended, of the Connecticut General Statutes. Appellants' argument as to Sec. 16-22 has required reprinting in Appendix I of excerpts from the Regulations of Connecticut State Agencies which were presented to the District Court in order to clarify the state's practices in implementing this statute.

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[1]The memorandum of decision referred to this record as "expansive." Jurisdictional statement, p. 6a.

ARGUMENT

The decision of the three-judge District Court is correct and should be affirmed. The arguments suggested by the jurisdictional statement do not support the conclusion that the issues involved are substantial or that the District Court was in error.

A.

Adoption of the Amendments to Sec. 25-32, Connecticut General Statutes was a Constitutional Exercise of the State's Police Powers.

As to Sec. 25-32, as amended by P.A. 77-606, the appellants have claimed in their jurisdictional statement unequal application of laws and regulations designed to protect the health and welfare of the public, which has resulted in their having suffered a *de facto* taking of their property.[2]

In the course of implementing the Federal Safe Drinking Water Act (P.L. 93-523) at the state level, the Connecticut State General Assembly in 1975 and 1977 adopted statutes providing for the development of legislation, departmental regulations, and procedures for the use of eminent domain powers to protect and preserve the purity and adequacy of the public water supplies furnished by private water utilities.[3] The District Court took note of the purpose of the 1975 statute to study and develop more explicit and more restrictive state statutes to control the use and disposition of watershed and off watershed land.[4] The District Court's reading of the 1975 and 1977 statutes confirmed that both the state legislature and the Council on Water Company Lands it had created to study and develop recommendations for public action for this purpose, had acted diligently to implement the federal policies on safe drinking water.[5]

[2]Jurisdictional statement, p. 2, Questions Presented, "A."

[3]Jurisdictional statement, pp. 32a-35a (Public Act No. 75-405, adopted 1975) and p. 26a-32a (Public Act No. 77-606, adopted 1977).

[4]Jurisdictional statement, p. 3a-4a.

The practical results of Public Act 77-606 of which appellants now complain are (1) that the classifications established under this statute could force them to retain certain lands for water supply protection and (2) that such classifications are not applied to any other class of land owners.

By attacking the classification of water supply lands and Sec. 25-32, the appellants have undermined their own major premise. The District Court noted in its Memorandum of Decision that,

> ". . . (T)he plaintiffs submit that no health hazards will be created by their contemplated sales because they rest assured that their water treatment facilities more than adequately protect the public and that any sale of property must pass muster before the Department of Health under other statutes and regulations. See, e.g., Conn. Gen. Stat. § 25-32(b)."[6]

The District Court found evidence of a substantial public controversy over the effectiveness of existing water treatment facilities and the adequacy of current state health department guidelines to determine the size of the watershed needed to produce an adequate supply of pure water for the consumers served by the appellants. It then said,

> "The extensive testimony of experts and documentary evidence presented to this Court clearly demonstrate

[5]Jurisdictional statement, Appendix C, p. 26a, reprinting Sec. 1 of Public Act No. 77-606.

[6]Jurisdictional statement, Appendix B, p. 6a. This is still the appellants' claim. See Jurisdictional statement., p. 8.

that innumerable factors must be considered and weighed in order to resolve the dispute concerning the feasibility of the sales of water company lands. The place for a definite determination of the controversy is the legislature and not the judiciary."[7]

For the reasons spelled out in the legislative's express findings, three categories were established by the state legislature for administration of the Health Commissioner's discretion in authorizing sales of water company lands under Sec. 25-32.[8]

The categories are based on three degrees of proximity to a public drinking water supply or reservoir. In all of the classes created, however, the state legislature provided explicit conditions and criteria under which the state health commissioner was authorized to grant a permit for a change in land use.[9] In the most extreme case, Class I land, the permit would not be granted "unless the applicant demonstrates that such change will not have a significant adverse impact upon the present and future purity and adequacy of the public drinking water supply."[10] For the class of land given less protection as a source of public drinking water (Class II), a broader discretion was allowed to the Health Commissioner; and the empowering language was made more permissive.[11] The remaining category, Class III land, does not require a permit.[12]

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[7]Id., Appendix B, pp. 6a-7a.

[8]Id., Appendix C, pp. 27a-28a, Sec. 3 of Public Act No. 77-606.

[9]Jurisdictional statement, p. 28a, Appendix C, Sec. 4(b), (c), (d) and (e) of Public Act No. 77-606.

[10]Id., subsection (b).

[11]Id., subsections (c) and (d).

[12]Jurisdictional statement, Appendix C, pp. 28a-29a, compare Sec. 3(c) and Sec. 3(b) and (c).

A reading of Public Act No. 77-606 in Appendix C of appellants' jurisdictional statement (pp. 26a-32a) thus reveals that appellants' summary of its provisions is inaccurate and the "*de facto* taking" they claim is not consistent with the facts.[13] There is no arbitrary, permanent prohibition against sales of any of the three categories of water company land. Instead a detailed statutory procedure has been adopted to guide the filing and the approval of applications within previously described criteria.[14]

The so called "moratorium" is simply a stay for not more than two years pending the adoption of implementing regulations, unless the regulations are adopted before that date. At the time this is filed less than eight months remain of that period; and the rulemaking process is currently underway.[15]

There is no offer or finding in this case that there exists in fact any particular proposed sale or other transaction to dispose of water company land in any of the three classes. To the extent that this was the evidence before the District Court, the constitutional issue was decided in terms of appellants' "contemplated sales."[16] No such hypothetical sales would occur until after substantial future plant construction, including new filtration facilities in the future.[17] The appellees contend, as before, that no case or controversy is here presented for decision by the Court on appeal.

As appellees argued in their brief to the District Court, the appellants are in possession of their property at all times, regardless of whether or not its disposition is made condi-

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[13]Jurisdictional statement, pp. 3-4, "Statement."

[14]Jurisdictional statement, Appendix C, pp. 30a-32a, Sec. 5 and 6 of Public Act No. 77-606.

[15]Id., p. 32a, Sec. 8 of Public Act No. 77-606.

[16]Jurisdictional statement, Appendix B, p. 6a.

[17]Id., p. 4a.

tional on statutory requirements for the protection of public drinking water supplies or for any other regulatory purpose. Any removal of the land from the appellants' public utility rate base as surplus for any reason is entirely the unilateral discretionary act of the appellants, which the state regulatory agencies do not consider or control until appellants apply to sell, lease or assign the land.[18]

The appellees contend that requiring the water utility companies to use watershed land for the provision of water utility service to the public is not an unconstitutional deprivation of all reasonable uses of that land. The appellants' land in such a case is used for exactly the purpose for which it was acquired. From this it follows that appellants are at all times entitled to enjoy a return on the use of the subject land as part of their utility plant under Public Act 77-606.[19] Consequently, the appellants could not demonstrate any taking of their land or of any rights in the land.

The District Court held this legislation to be a permissible exercise of the police power to protect the purity and adequacy of the public drinking water supply which bears a real and substantial relation to a legitimate state purpose.[20] While the limitation on the sale, lease or other disposition of water company lands may affect the appellants' opportunities to reap immediate net profits, said the Court, that fact alone does not give rise to any constitutional infirmity.[21]

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[18]Jurisdictional statement, Appendix C, pp. 26a-32a, (Sec. 25-32, as to protection of public drinking water supply) and p. 36a (Sec. 16-43, as to public utility regulations).

[19]*Bridgeport Hydraulic Co.* v. *Rempsen*, 124 Conn. 437, 442-443 (1938). *See Public Utility District No.* 1 v. *City of Seattle*, 382 F.2d 666 (1967). Compare jurisdictional statement, pp. 17a-18a.

[20]*Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 8 (1974).

[21]*Day-Brite Lighting, Inc.* v. *Missouri*, 342 U.S. 421, 424 (1952).

The second claim of appellants concerning the amendments to Sec. 25-32 in Public Act 77-606 is that no class of landowners other than water companies is so regulated and that the appellants are being treated differently from others who are similarly situated. The short answer of the District Court was that public utility water companies are different from any other class of landowners.

> "We again emphasize that the plaintiffs [appellants], unlike other private corporations, are public purpose entities. They have been specially franchised by the State to supply communities with an 'abundant supply of pure water for public and domestic use.' (Stip. Ex. 12-18) Thus it seems clear that the State may impose reasonable land use controls upon them which may differ materially from those impressed upon other private property owners. The record reasonably supports the legislature's fear that any massive disposition of watershed properties would endanger the public health and welfare. The 1975 Amendments exhibit the legislature's comprehensive response to a potential evil which cannot be deemed to be constitutionally impermissible under the Fifth and Fourteenth Amendments. Cf. *Permian Basin Area Rate Cases*, 390 U.S. 747, 768-772 (1968); *Williamson* v. *Lee Optical Co.*, supra, 348 U.S. at 487-488."[22]

The equal protection clause has generally been held to mean that the rights of all persons must rest upon the same rule under similar circumstances applying to the exercise of all the powers of the state which can affect the individual or his property.[23]

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[22]Jurisdictional statement, Appendix B, Memorandum of Decision at p. 20a. *Williamson* v. *Lee Optical Co.*, was cited by District Court Memorandum of Decision at p. 7a as 348 U.S. 483, 487-488 (1955).

[23]*Louisville Gas & Electric Co.* v. *Coleman*, 277 U.S. 32, 37 (1927).

In statutes protecting the public health and welfare the legislative powers of classification are broad; and the Supreme Court has repeatedly sustained expressions of state legislative discretion based on minor differences in status between classes regulated and classes excluded from regulation.[24] As the Supreme Court commented at a later date,

> "Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negate every conceivable basis which might support it."[25]

The opinion of the District Court rejected the appellants' claim that the classification of their property was an invidious deprivation of equal protection. The District Court found the circumstances of the lands' acquisition, the public obligations assumed under the charters given to the water companies, and the importance of the purity and adequacy of the public water supply all support the particular application of Sec. 25-32 to the disposition of water company lands located within and adjacent to watersheds and reservoirs. For these reasons the appellants' reliance on authorities based on the treatment of persons similarly circumstanced is unsupported by the facts found by the District Court.[26]

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[24]Cases collected in footnote 1 of dissent by Mr. Justice Brandeis in *Louisville Gas & Electric Co.* v. *Coleman*, Id., at pp. 42-43.

[25]*Madden* v. *Commonwealth of Kentucky, et al.*, 309 U.S. 83, 88 (1940), citing with approval the dissenting opinion of Mr. Justice Brandeis in *Louisville Gas & Electric Co.* v. *Coleman*, supra.

[26]Jurisdictional statement, p. 7.

B.

The Amendment Expanding the Effect of Sec. 16-22, Connecticut General Statutes was a Constitutional Exercise of the State's Police Powers.

Sec. 16-22 extended to the transfer of ownership of the assets or franchise of a public service company the same rule that had long been in effect as to the burden of proof in administrative hearings involving utility rates.[27] The District Court rejected appellants' contention that this statute unconstitutionally requires them to assume the burden of proof that a transfer of their property must be shown to be in the public interest. The District Court said, "We consider the enactment to be a lawful exercise of the State's police power."[28] Constitutionality of Sec. 16-22 must be considered in terms of the statute whose implementation it controls, Sec. 16-43.[29] The Public Utilities Control Authority is governed in the administration of Sec. 16-43(1) by the regulations its predecessor state agency adopted, Sec. 16-43-1 and 16-1-61, Regulations of Connecticut State Agencies.[30]

The administering state agency has provided by regulations that have the force of state statutes for the submission of substantial information about each proposed sale under Sec. 16-43(1).[31] The burden of proving the applicant's case

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[27]Jurisdictional statement, p. 3, Questions Presented, "B." Sec. 16-22 is reprinted in Appendix C at p. 32a of jurisdictional statement.

[28]Jurisdictional statement, Appendix B, supra, p. 23a, footnote 4.

[29]Jurisdictional statement, Appendix D, p. 36a. Appellants have reprinted subsection (1) of Sec. 16-43, which is the only portion that applies to the alienation of interests in water company lands.

[30]Sec. 16-43-1, 16-1-46, and 16-1-61, Regulations of Connecticut State Agencies were reprinted as Appendix I of this brief. These were part of Exhibit 10 before the District Court. See Record on Appeal, Document No. 56.

[31]*Bailey* v. *Bruneau's Truck Service, Inc.*, 149 Conn. 46, 54 (1961); *Hyde* v. *Connecticut Co.*, 122 Conn. 236, 240 (1936).

under Sec. 16-22 is identical to the apportionment of the burden of proof generally followed by the Supreme Court of the State of Connecticut.[32] The legislature simply codified the state common law as to the burden of proof before administrative tribunals by amending Sec. 16-22 to extend it coverage to utility land sales.[33] The water companies and all other utilities applying under Sec. 16-43(1) would in all events have the burden to prove the essential facts necessary to demonstrate their compliance with the provisions of that statute.[34] Obviously an applicant could not rely on the PUCA or on any opponent to prove its case under such an application.[35] The applicant's burden is to prove the truth of the propositions set forth in its application under Sec. 16-43(1).[36]

As water companies, the appellants are part of a class that includes gas, electric, telephone, cable antenna television, and sewage companies, all of which are public service companies.[37] All members of appellants' class are privately owned and operated for the purpose of making a profit. So the appellants and others in their class are all being treated alike; and as public service companies the appellants and their class are different from all other land-owning individuals and corporations organized for profit.

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[32]*Nikitiuk* v. *Pishtey*, 153 Conn. 545, 552 (1966).

[33]*Lyons* v. *Fox New England Theatres, Inc.*, 112 Conn. 691, 692 (1931); *Conley* v. *Board of Education*, 143 Conn. 488, 496 (1956). Sec. 16-22 is consistent with federal precedents applicable to similar issues.

[34]*South-East Coal Co.* v. *Consolidation Coal Co.*, 434 F.2d 767 (1970).

[35]*U.S. Fire Ins. Co.* v. *China Union Lines, Ltd.*, 375 F. Supp. 652, aff'd. 496 F.2d 1198 (1974).

[36]*Lodge 743, International Association of Machinists, AFL-CIO* v. *United Aircraft Corp.*, 299 F. Supp. 877 (1969) (Conn., D.C.); *Chambers* v. *Blickle Ford Sales, Inc.*, 313 F.2d 252 (1963) (Conn. C.A.)

[37]Sec. 16-1, Connecticut General Statutes.

The public service companies, including the appellants, are unique in that they were specially granted the franchises by which they provide a public service in behalf of the state.[38] So the public service companies have been given powers commonly held only by the state on the one hand and are subject to a high degree of regulation and control by the state on the other.[39] Also, appellants' property is uniquely and specially protected by law at a level that exceeds the realty of any other class of private property owners. Finally, the grant of public service franchise rights is open-ended and may be altered, amended, or repealed at the pleasure of the legislature.

The contents of the application under Sec. 16-43(1), as defined by the procedural regulations reprinted in Appendix I, set forth the scope of the facts the PUCA considers in the process of permitting transfer of property interests in utility plants. Both the purity and the adequacy of the water supply are encompassed by the elements of the application, as it may appertain to water company lands located in areas vulnerable to pollution. The application is explicitly required to represent whether the real property is necessary or useful in the performance of the duty of the public service company to the public.[40] This includes all possible aspects of supply and watershed protection, supporting the objects of Sec. 25-32. The components of the application routinely require a concise and explicit statement of the facts on which the PUCA is expected to rely in granting the authorization of the proposed transaction, including the public convenience and necessity thereof.[41] In addition the special components of the applica-

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[38]Jurisdictional statement, Appendix B, Memorandum of Decision, pp. 2a-3a, 20a.

[39]Jurisdictional statement, Appendix B, Memorandum of Decision, pp. 13a-15a.

[40]Appendix I, Sec. 16-43-1(b), Regulations of Connecticut State Agencies.

[41]Appendix I, Sec. 16-1-46(a)(3), Regulations of Connecticut State Agencies.

tion include a copy of the agreement to sell, lease or assign the real property.[42]

The grant in the appellants' charters is for the purpose of supplying to the respective franchise areas "an abundant supply of pure water for public and domestic use."[43] This purpose is implemented by Sec. 16-22 and 16-43(1), and by the above-referenced procedural regulations to achieve that purpose, which expresses the public interest mentioned in Sec. 16-22. The requirement for approval and careful consideration of the interests of stockholders and customers was established to prevent the wasting of the appellants' real estate and other property by collusive sales for less than fair market value that may deprive the respective water companies of plant facilities necessary to provide utility service to the public in accordance with their legislative charters. This is the necessary and sufficient connection between the evil addressed by Sec. 16-22 and the remedy adopted, which supplies the nexus required by constitutional due process.[44] For these reasons Sec. 16-22 is reasonable and bears a rational relation to the state's regulatory policy.[45]

C.

The Decision in Penn Central Transportation Company v. City of New York Supports Appellees' Motion to Affirm.

In their Jurisdictional statement the appellants discussed *Penn Central Transportation Company* v. *City of New York* as an authority in support of the proposition that the questions

[42]Appendix I, Sec. 16-1-61(b), Regulations of Connecticut State Agencies.
[43]Jurisdictional statement, Appendix B, Memorandum of Decision, p. 20a.
[44]*California Bankers Association* v. *Shultz*, 416 U.S. 21 (1974).
[45]*General Telephone Co. of Southwest* v. *U.S.*, 449 F.2d 846 (1971).

appellants seek to place before the United States Supreme Court are substantial.[46] Appellants' case was decided by the Supreme Court on issues related to preservation of historic or aesthetic interest, while the instant case turns substantially on the preservation of an adequate supply of pure water. Several of the points in the Court's rationale support the affirmation of the District Court's judgment against the appellants.

The Supreme Court affirmed the decision of the Court of Appeals of New York, which had upheld the New York City Landmarks Preservation Law, which was challenged as a taking in violation of the Fifth and Fourteenth Amendments. The Supreme Court said that in instances in which a state tribunal reasonably concluded that "the health, safety, morals or general welfare" would be promoted by prohibiting particular contemplated uses of land, the Supreme Court has upheld land use regulations that destroyed or adversely affected recognized real property interests.[47] In one example the Supreme Court said the state might properly make a choice between the preservation of one class of property and that of the other. It then said that the state had not exceeded its constitutional powers by deciding upon the destruction of one class of property without compensation in order to save another which, in the judgment of the legislature, is of greater value to the public.[48]

In a reference that parallels the appellants' complaint that they are unable to capitalize on the rise in market value of their watershed and buffer zone land by reason of the statutes protecting public health, the Supreme Court said

[46]_____ U.S. _____, 98 S. Ct. 2646 (1978). For appellants' references see jurisdictional statement, pp. 5, et seq.
[47]*Penn Central Transportation Company* v. *City of New York*, 98 S. Ct. at 2260.
[48]*Id.*, referring to *Miller* v. *Schoene*, 276 U.S. 272 (1928).

> ". . . (T)he submission that appellants may establish a 'taking' simply by showing that they have been denied the ability to exploit a property interest that they heretofore had believed was available for development is quite simply untenable."[49]

At a later point the Supreme Court said,

> "It is of course true that the Landmarks Law has a more severe impact on some landowners than on others, but that in itself does not mean that the law effects a 'taking.' Legislation designed to promote the general welfare commonly burdens some more than others."[50]

Again referring to facts that parallel the instant case, the Supreme Court later pointed out that,

> ". . . (T)he New York City law does not interfere in any way with the present uses of the Terminal. Its designation as a landmark not only permits but contemplates that appellants may continue to use the property precisely as it has for the past 65 years . . . So the law does not interfere with what must be regarded as Penn Central's primary expectation concerning the use of the parcel. More importantly, on this record, we must regard the New York City law as permitting Penn Central not only to profit from the Terminal but to obtain a 'reasonable return' on its investment."[51]

The appellants stipulated in the instant case that The Bridgeport Hydraulic Company owns approximately 18,062 acres of land, of which it proposes to dispose of approximately 13,459 acres. 9,366 acres of the land that party wishes to

[49] *Id.*, 98 S.Ct. 2662-2663.

[50] *Id.*, 98 S. Ct. 2664.

[51] *Id.*, 98 S. Ct. 2666.

sell are currently used and useful in providing water utility service to the public within its franchise area.[52] The appellants also stipulated that the intervenor, The New Haven Water Company, owns approximately 23,213 acres of land, of which it proposes to dispose of 15,903 acres. 14,225 acres of the land that intervenor wishes to sell are currently used and useful in providing water utility service.[53]

The location and character of the land the appellants propose to dispose of were described to the District Court in detailed exhibits that are a part of the record in this case.[54] In summing up the object of the legislation the appellants contend is unconstitutional the District Court said,

> "By providing that there can be no massive divestitures of watershed and off-watershed lands the State is insuring the ability of the water companies to provide pure water to their customers."[55]

It does not appear that the Supreme Court's recent decision on the New York City Landmarks Law provides a basis on which to conclude that the questions appellants have submitted are substantial. On the contrary, the reasons for this decision are entirely consistent with the reasoning of the District Court in the instant case. The primary distinction is that the health hazards presented by the appellants' contemplated divestiture programs are more acute and threaten

[52] See the Record on Appeal, Stipulation 152c. This will be found in Document 54.

[53] *Id.*, Stipulations, 26, 278 and 279.

[54] See exhibits 56-60 and 61-64, together with stipulations nos. 281(a) and (b), 282(a) and (b), 285, 288, 289, 290(a) and (b), 291(a) and (b), 292(a) and (b), 293(a) and (b), 299, 300, 304, 305, 313, and 314. These will be found in the Record on Appeal in Documents Nos. 54, 59, and 69.

[55] Jurisdictional statement, Appendix B, Memorandum of Decision, p. 6a.

a more fundamental social value that was before the Supreme Court in the New York City Landmarks Law case.

D.

CONCLUSION

The appellees respectfully submit, therefore, that the appellants present no substantial question for the decision of the Supreme Court, and that the judgment of the District Court should be affirmed.

Respectfully submitted,

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APPENDIX I

Petitions and Applications, General Provisions

Sec. 16-1-46. Form

The form to be followed in the filing of petitions and applications hereunder will vary to the extent necessary to provide for the nature of the legal rights, duties or privileges involved therein. Nevertheless, all petitions and applications shall include the following components:

(a) Statement of application. Each petition or application shall incorporate a statement setting forth clearly and concisely the authorization or other relief sought. The statement shall cite by appropriate reference the statutory provision or other authority under which such authorization or relief is to be granted by the commission. In addition to the specific requirements for particular types of petitions and applications that may hereinafter be stated, the statement of application shall further set forth:

(1) The exact legal name of each person seeking the authorization or relief and the address or principal place of business of each such person. If any applicant or petitioner is a corporation, trust association or other organized group, it shall also give the state under the laws of which it was created or organized.

(2) The name, title, address and telephone number of the attorney or other person to whom correspondence or communications in regard to the petition or application are to be addressed. Notice, orders and other papers may be served upon the person so named; and such service shall be deemed to be service upon the petitioner or applicant.

(3) A concise and explicit statement of the facts on which the commission is expected to rely in granting the authorization or other relief sought, including the public convenience and necessity thereof.

(4) An explanation of any unusual circumstances involved in the petition or application, to which the commission will be expected to direct its particular attention, including the existence of emergency conditions or any request for the granting of interlocutory relief by way of an interim order in the proceeding.

(b) Annexed materials. There shall be attached to the petition or application any exhibits, sworn written testimony, data, models, illustrations and all other materials that the petitioner or applicant deems necessary or desirable to support the granting of the petition or application. In addition, such annexed materials shall also include such exhibits, sworn written testimony, and other data that any statute or these rules may require.

(Effective December 21, 1971)

Sec. 16-1-61. Special components

In addition to the requirements stated in part 1 of this article each applicant for the approval of the commissioners under section 16-43 of the of the general statutes shall contain the following data, either in the statement of applicant or as exhibits annexed thereto and accompanying the application:

(b) A copy of any agreement to merge, consolidate, sell, lease, assign or mortgage.

Approval by the Commission for the Disposition of Certain Assets of Public Service Companies

Sec. 16-43-1. Requirement of approval

(a) No public service company shall, directly or indirectly, sell, lease, assign, or otherwise dispose of or cease to own any interest in land, buildings, real estate fixtures or any other interest in real estate unless it shall first have applied for and received the approval of the commission in the manner provided by the Rules of Practice of the commission.

(b) For the purpose of determining whether or not the proposed transaction is subject to its approval, as aforesaid, the commission shall consider and make a finding of fact as to whether or not the subject real property is an essential part of the franchise of the public service company or is necessary or useful in the performance of the duty of the public service company to the public.

(c) The commission shall consider and make a finding of fact as to whether such interest in real property consists of a parcel of unimproved real property containing three (3) acres or more or is in any way subject to acquisition by any municipality or the state for any purpose authorized by law.

(d) In deciding whether or not to grant such approval the commission shall make a finding as to whether or not such interest in land, buildings, real estate fixtures or other interest in real estate is to be sold, leased, assigned or otherwise disposed of for a consideration that is equal in amount to the fair market value thereof. In the event the commission finds that consideration equals an amount less than such fair market value, then the commission shall further consider whether the acceptance of that consideration by the public

service company adversely affects the interests of the stockholders and owners or of the customers of the public service company.

(Effective June 21, 1972)